Permodalan YBK Sdn Bhd v Pentadbir Tanah Daerah Hulu Selangor

HIGH COURT (SHAH ALAM) — ORIGINATING MOTION NOS 21–99 OF 2010, 21–100 OF 2010 AND 21–101 OF 2010
HADHARIAH SYED ISMAIL J
28 DECEMBER 2012

Land Law — Administration — Land revenue — Whether land administrator's decision to reject and refund payment of arrears of quit rent unlawful — Whether endorsement on register document of title of service of statutory notice of demand for payment of quit rent should be made on same day of service — Whether endorsement of notice after expiry of time specified therein invalid — Whether third party could settle quit rent arrears on behalf of land owner — Whether rejection of payment for being several days late baseless and unreasonable — National Land Code ss 97(2), 98, 99 & 100

The three motions in this case concerned the appellant's appeal against the respondent's rejection and refund of a substantial amount in quit rent arrears the appellant had paid in respect of 12 parcels of land ('the lands') and the subsequent issuance of forfeiture notices against some of the lands. Although the appellant owned the lands the bulk of the arrears were paid on its behalf by a third party ('Yayasan Melaka'). One of the reasons cited by the respondent for rejecting the payments was that Yayasan Melaka was not entitled under s 98 of the National Land Code ('NLC') to make the payments on the appellant's behalf. Another reason was that the payments were made after the 30-day time period given in the Form 6A notice of demand issued to the appellant by the respondent pursuant to s 97 of the NLC had expired. The Form 6A was not issued for four of the parcels of lands. In its instant appeals under s 418 of the NLC, the appellant argued that while s 97(2) of the NLC required a note of the service of the Form 6A ('the Form') to be endorsed on the register document of title of the lands concerned, in the instant case the endorsements were made after the 30-day notice specified in the Form had already expired. This, the appellant argued, amounted to the endorsement of a lapsed or invalid notice and constituted a breach of s 97(2). The appellant said that although s 97(2) did not specify when the endorsement should be made it stood to reason that it had to be made before the notice period in the Form expired so that the provisions in s 99 of the NLC could be complied with. The appellant said the payments were in any event made within time and the respondent's rejection of the payments was wrong.

Held, allowing the appeals and setting aside the respondent's decision:

(1) The endorsements on the register documents of title had no effect in law

as they were made after the three months' notice in the Form 6A had expired. The effect was as if there was no endorsement at all. By implication, it meant the respondent had not strictly complied with s 97(2) of the NLC (see para 19).

(2) The purpose of the endorsement was to give notice to all and sundry having existing or prospective interests in the land that forfeiture may be imminent if the registered owner failed to comply with the notice of demand. Although s 97(2) did not specify when the endorsement should be made, if it was made after the three months' notice given to the land owner had expired, it meant the world at large was denied a chance to make the payment as by then, the subject-matter no longer existed, the offer would have lapsed and the land would be liable to forfeiture (see para 19).

(3) In this case the endorsement had not achieved the very purpose for which it was envisaged under the NLC. Prudence and best practice demanded that the respondent should have endorsed the note of the service of Form 6A on the register documents of title on the same day it was served on the appellant (see para 19).

(4) Assuming the endorsements were validly entered, the three months' period should start to run from the date of the endorsement to give the requisite notice to the world at large. Since the quit rent arrears were paid before the endorsement was entered, the payments were made within time. If the court was wrong on this point and time started to run from the date of service of the Form 6A, the payment was made two days after the last date for payment. This was not an inordinate delay and no prejudice was caused to the respondent. Rejecting the payment for a two-day delay was unreasonable (see para 19).

(5) Yayasan Melaka was entitled in law and in fact to make the payments on the appellant's behalf. Section 98 did not expressly prohibit any person not having any interest in the lands from making payment. Read as a whole, s 98 allowed payment to be made by persons other than the registered proprietor. A liberal and wider interpretation should be given to s 98 as the respondent's main concern was to collect payment and not to enquire into the capacity of the entity which made the payment. Such a conclusion was consistent with ss 99 and 100 of the NLC (see para 20).

(6) In the case of the four pieces of land in respect of which Form 6A was not issued the payment of quit rent arrears were returned by the respondent simply because part of the amount owing was paid 14 days later than the promised date. This was unreasonable and the respondent had no basis to reject and return the payment made (see para 21).

(7) The respondent had not only failed to comply with the provisions of ss 97(2), 98, 99 and 100 of the NLC but had acted unreasonably. His

refusal to accept payment and to return the payments and to issue forfeiture notices were all unlawful and ought to be set aside (see para 22). A

[Bahasa Malaysia summary

Tiga usul dalam kes ini adalah berkaitan rayuan perayu terhadap penolakan responden dan bayaran balik sejumlah besar cukai tanah tertunggak yang telah dibayar perayu berhubung 12 bidang tanah ('tanah-tanah tersebut') dan berikutan keluaran notis-notis pelucuthakan terhadap beberapa tanah-tanah tersebut. Walaupun perayu memiliki tanah-tanah tersebut sebahagian besar tunggakan telah pun dibayar bagi pihaknya oleh pihak ketiga ('Yayasan Melaka'). Salah satu sebab yang diberikan oleh responden kerana menolak bayaran-bayaran itu adalah kerana Yayasan Melaka tidak berhak di bawah s 98 Kanun Tanah Negara ('KTN') untuk membuat bayaran bagi pihak perayu. Satu lagi sebab adalah bahawa bayaran-bayaran yang telah dibuat selepas tempoh masa 30 hari yang diberikan dalam notis tuntutan Borang 6A yang dikeluarkan kepada perayu oleh responden menurut s 97 KTN telah pun luput. Borang 6A tidak dikeluarkan ke atas empat bidang tanah-tanah tersebut. Dalam rayuan-rayuannya di bawah s 418 KTN, perayu berhujah bahawa walaupun s 97(2) KTN menghendaki nota penyampaian Borang 6A ('Borang tersebut') diendorskan atas buku daftar berhubung dokumen hak milik tanah-tanah tersebut yang berkaitan, dalam kes ini pengendorsan tersebut telah dibuat selepas notis 30 hari yang ditetapkan dalam Borang tersebut telah pun luput. Ini, perayu berhujah, merupakan pengendorsan notis yang telah luput atau tidak sah dan merupakan pelanggaran s 97(2). Perayu menyatakan meskipun s 97(2) tidak menetapkan bila pengendorsan patut dibuat adalah wajar ia perlu dibuat sebelum tempoh notis dalam Borang tersebut luput agar peruntukan dalam s 99 KTN boleh dipatuhi. Perayu menyatakan bayaran-bayaran tersebut dalam apa keadaan pun telah dibuat dalam tempoh masa dan penolakan responden terhadap bayaran-bayaran tersebut adalah salah. B C D E F G

Diputuskan, membenarkan rayuan-rayuan dan mengetepikan keputusan responden:

(1) Pengendorsan-pengendorsan pada daftar dokumen-dokumen hak milik tiada kesan perundangan kerana ia dibuat selepas notis dalam Borang 6A telah luput tiga bulan. Kesannya adalah seperti tiada pengendorsan telah dibuat. Akibatnya, ini bermakna responden tidak mematuhi s 97(2) KTN (lihat perenggan 19). H

(2) Tujuan pengendorsan adalah untuk memberi notis kepada semua yang mempunyai atau bakal mempunyai kepentingan atas tanah bahawa peletakhakan mungkin pasti berlaku jika pemilik berdaftar gagal untuk mematuhi notis tuntutan. Walaupun s 97(2) tidak menetapkan bila pengendorsan patut dibuat, jika ia dibuat selepas notis tiga bulan diberikan kepada pemilik tanah luput maka ini bermakna pada masa itu I

dinafikan peluang membuat bayaran kerana ketika itu, perkara pokok tidak lagi wujud, tawaran telah pun luput dan tanah tersebut boleh diletakhak (lihat perenggan 19).

(3) Di dalam kes ini pengendorsan tidak mencapai tujuan sebenar ia digubal di bawah KTN. Sikap berhemat dan amalan terbaik dituntut agar responden wajar mengendorskan nota penyampaian Borang 6A atas daftar dokumen-dokumen hak milik pada hari yang sama ia disampaikan ke atas perayu (lihat perenggan 19).

(4) Dengan andaian pengendorsan teah dimasuki dengan sah, tempoh tiga bulan itu patut bermula dari tarikh pengendorsan untuk memberikan notis yang perlu kepada umum. Oleh kerana tunggakan cukai tanah telah dibayar sebelum pengendorsan dimasuki, bayaran-bayaran telah dibuat dalam tempoh masa. Jika mahkamah silap tentang perkara ini dan masa bermula dari tarikh penyampaian Borang 6A, bayaran telah dibuat dua hari selepas tarikh akhir untuk bayaran. Ini bukan kelewatan melampau dan tiada prejudis disebabkan kepada responden. Dengan menolak bayaran kerana lewat dua hari adalah tidak munasabah (lihat perenggan 19).

(5) Yayasan Melaka berhak dari segi undang-undang dan fakta untuk membuat bayaran-bayaran bagi pihak perayu. Seksyen 98 tidak dengan jelas melarang mana-mana orang yang tiada apa-apa kepentingan ke atas tanah-tanah tersebut daripada membuat bayaran. Jika dibaca dengan menyeluruh, s 98 membenarkan bayaran dibuat oleh mereka selain daripada tuan punya berdaftar. Tafsiran liberal dan lebih luas patut diberikan kepada s 98 kerana isu utama responden adalah untuk mengutip bayaran dan bukan untuk menyiasat tentang kapasiti entiti yang membuat bayaran itu. Kesimpulan sedemikian adalah konsisten dengan ss 99 dan 100 KTN (lihat perenggan 20).

(6) Dalam kes keempat-empat bidang tanah tersebut yang mana Borang 6A tidak dikeluarkan bayaran tunggakan cukai tanah telah dikembalikan semula oleh reponden hanya kerana sebahagian jumlah yang terhutang telah dibayar 14 hari kemudian dari tarikh yang dijanjikan. Ini tidak munasabah dan responden tiada asas untuk menolak dan memulangkan bayaran yang dibuat (lihat perenggan 21).

(7) Responden bukan sahaja gagal mematuhi peruntukan-peruntukan ss 97(2), 98, 99 dan 100 KTN tetapi telah bertindak dengan tidak munasabah. Keengganannya menerima bayaran dan memulangkan bayaran-bayaran tersebut dan mengeluarkan notis-notis peletakhakan kesemuanya menyalahi undang-undang dan patut diketepikan (lihat perenggan 22).]

Notes

For a case on land revenue, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2418.

Cases referred to

Pow Hing & Anor v Registrar of Titles, Malacca [1981] 1 MLJ 155, FC (refd)

Legislation referred to

National Land Code ss 97, 97(1), (2), 98, 98(3)(a), 99, 100, 130, 418, Forms 6A, 8A

Hasnal Rezua Merican (Kamarul Hisham, Lim Kon Kin and Siti Maspuah with him) (The Chambers of Kamarul Hisham & Hasnal Rezua) for the appellant.
Edmund Bon (Chan Yen Hui with him) (Chooi & Co) for the respondent.

Hadhariah Syed Ismail J:

[1] This case is about the respondent has issued the requisite statutory notices under the National Land Code to the appellant asking for payment of arrears of quit rent. But when payments were made, the same were rejected and returned on the ground the payments were made out of time and it was made by an entity not entitled under the law to do so. Aggrieved by the decision made by the respondent, by way of notice of motion, the appellant appealed to the High Court pursuant to s 418 of the National Land Code ('NLC'). The parties to all the three notice of motion are the same. The appellant is YBK and the respondent is Pentadbir Tanah Daerah Hulu Selangor. These appeals concern with the issue of whether in coming to its decision, the respondent has complied with the provisions of ss 97(2), 98–100 of the NLC. After hearing the parties, I allowed all the three appeals and set aside the respondent's decision. Dissatisfied with my decision, the respondent appealed to the Court of Appeal. Below are my reasons for allowing the appeals.

DECISION APPEALED AGAINST

[2] An excerpt of the decision of the Selangor State on YBK which is relevant to this appeal is reproduced below:

> KEPUTUSAN KERAJAAN NEGERI SELANGOR TERHADAP ISU YBK
>
> Majlis Mesyuarat Kerajaan Negeri Selangor (MMKN) hari ini telah mendengar pembentangan oleh pengarah Pejabat Tanah dan Galian dan Pejabat Daerah Hulu Selangor berkenaan tanah di Serendah yang telah diberimilik kepada Yayasan Basmi Kemiskinan (YBK).
>
> MMKN telah diberitahu pada pemberimilikan 33 lot tanah seluas 876 hektar (2,164 ekar) kepada YBK telah dibuat oleh kerajaan yang terdahulu pada 24 Oktober 1994. Pada November 1995, MMKN pada waktu itu telah meluluskan

untuk mengurangkan bayaran premium dari RM10,000 seekar (23 sen satu kaki persegi) kepada RM1.000 per lot (RM15 seekar atau 0.035 sen satu kaki persegi)

Pembayaran cukai tanah tidak pernah dijelaskan selama 13 tahun hinggalah pada Ogos 2009 yang lepas di mana YBK telah cuba membuat pembayaran untuk sebahagian daripada jumlah cukai yang tertunggak.

Pengarah PTG juga memberitahu cara bagaimana YBK membuat permohonan bayaran berperingkat serta cubaan untuk mendapatkan kelulusan merancang tanah yang terlibat secara 'fast track'.

Kerajaan Negeri mendapati bahawa YBK telah gagal mematuhi beberapa peraturan di antaranya pembayaran cukai tanah secara berperingkat. Dengan itu MMKN telah membuat keputusan untuk memulangkan semula wang cukai tanah kembali kepada YBK sehingga satu permohonan baru dibuat.

Keputusan ini dibuat bagi memastikan kesamarataan dan keadilan dalam pengendalian pengurusan tanah di mana Kerajaan Negeri sebelum ini pernah mengambil tindakan merampas tanah-tanah yang tidak dijelaskan cukainya selama setahun atau lebih.

Kerajaan Negeri juga tidak dapat menerima cek yang dikeluarkan oleh Yayasan Melaka untuk menjelaskan cukai tanah milik YBK kerana seksyen 98 Kanun Tanah Negara jelas menyatakan cukai tanah hanya boleh dijelaskan oleh pemilik tanah itu sendiri. Dengan demikian, Pejabat Daerah Hulu Selangor telah pun diarahkan untuk memulangkan cek tersebut kepada YBK secepat mungkin.

FACTS

[3] The appellant was the registered owner of the following lands, all of which are situated in Serendah, Hulu Selangor District:

No	Lot No	Title No	Group
1.	PT 0011023	HSD 44548	'Group A Lands' (Suit 99)
2.	PT 0011029	HSD 15737	
3.	PT 0011033	HSD 44549	
4.	PT 0011038	HSD 44553	
5.	PT 0011017	HSD 44551	'Group B Lands' (Suit 99)
6.	PT 0011028	HSD 15237	
7.	PT 0011037	HSD 14814	'Group C Lands' (Suit 100)
8.	PT 0011008	HSD15235	
9.	PT 0011013	HSD 44552	'Group D Lands' (Suit 101)
10.	PT 0011024	HSD 44550	
11.	PT 0011021	HSD 44827	
12.	PT 0011025	HSD 44826	

[4] As there is a slight different in facts with each notice of motion, it would be better to separate them under each suit number.

SUIT 99 (GROUP A AND B LANDS)

[5] In this case, the appellant failed to pay quit rent on time for the said lands in group A and B since 2001 and was in arrears of RM5,439,463.80.

[6] Pursuant to s 97 of the National Land Code (NLC), the respondent issued notices of demand under Form 6A dated 29 October 2009 to the appellant. By way of example, the notice in Form 6A reads as follows:

> KANUN TANAH NEGARA
>
> BORANG 6A
>
> (Seksyen 97 dan 98)
>
> Kepada PERMODALAN YBK SDN BHD NO. PENDAFTARAN: 274548-D
>
> Yang beralamat di 625A, Jalan Sentul, 51000 Wilayah Persekutuan Kuala Lumpur,
> Tuanpunya tanah/tanah-tanah yang tersebut dalam ruangan satu dan dua dalam Jadual di bawah ini.
>
> Bahawasanya sewa yang dikenakan bagi tanah/tanah-tanah yang tersebut dan genap masa berkenaan dengan tahun ini masih belum dibayar dan, mulai 01hb Jun, adalah dalam tunggakan.
>
> Kamu adalah dengan ini dikehendaki, dalam tempoh TIGA (3) BULAN dari tarikh notis ini disampaikan, supaya membayar di Pejabat Tanah Hulu Selangor di Kuala Kubu Bharu segala jumlah wang yang sekarang genap masa sebagaimana yang dimasukkan dalam ruangan ketiga (3) hingga enam (6) dalam Jadual itu dan yang dijumlahkan dalam ruangan akhirnya.
>
> DAN AMBIL PERHATIAN bahawa, jika jumlah/mana-mana daripada jumlah yang dinyatakan di ruangan akhir itu tidak dibayar dengan sepenuhnya dalam tempoh TIGA (3) bulan yang tersebut itu maka saya yang bertandatangan di bawah ini, menurut kuasa-kuasa yang diberi oleh seksyen 100, Kanun Tanah Negara, akan mengisytiharkan dengan jalan PERINTAH tanah/tanah-tanah yang berkenaan itu dilucuthak kepada Pihak Berkuasa Negeri.
>
> Bertarikh 26hb Oktober 2009
>
> tt
>
> Pentadbir Tanah
>
> Daerah Hulu Selangor

[7] In an undated letter issued to the appellant, the respondent informed the appellant of the last date to make payment for the respective group of lands as follows:

(a) group A lands — 29 January 2010; and

(b) group B lands — 14 March 2010.

[8] Form 6A for group A lands was received by the appellant on 3 November 2009. Form 6A for group B lands was received by the appellant on 14 December 2009. The appellant make the payment for group A and B lands on 1 February 2010 via Cashier's Order Ambank Nos 004641 and 004642 for the sum of RM5,439,463.80. In their letter of 1 February 2010, the appellant attached the cashier's order and states that the payment of RM5,439,463.80 was made by Yayasan Melaka on behalf of the appellant. Immediately, the next day which is 2 February 2010, the State Financial Officer of Selangor issued a letter to the appellant seeking explanation regarding Yaysan Melaka's interest over the lands. Paragraph 2 of the said letter reads:

> Adalah dimaklumkan bahawa Kerajaan Negeri Selangor ingin mendapat penjelasan mengenai kepentingan Yayasan Melaka dalam perkara di atas dan sebarang perjanjian atau persefahaman atau transaksi di antara pihak Yayasan Basmi Kemiskinan dan Yayasan Melaka berkaitan dengan tanah berkenaan.

[9] Under para 3 of the said letter, the appellant was asked to furnish the requested information on the very same day itself which is on 2 February 2010 to be discussed in the EXCO meeting on 3 February 2010. In response, the appellant, via its solicitors' The Chambers of Kamarul Hisham & Hasnal Rezua issued a very long reply letter dated 2 February 2010 to the State Financial Officer of Selangor. In para 14 of the said letter, the appellant confirmed that Yayasan Melaka has no interest whatsoever in the lands. This is what the appellant's solicitors wrote:

> 14. Anakguam kami mengesahkan bahawa Yayasan Melaka telah pun membuat pembayaran bagi Anakguam kami terhadap semua tuntutan di dalam Notis-Notis 6A bagi item-item 7 hingga 12 Jadual A. Pembayaran ini adalah dibuat selaras dengan Seksyen 99 KTN. Yayasan Melaka tidak mempunyai apa-apa kepentingan ke atas hartanah-hartanah tersebut dan tidak terdapat sebarang perjanjian atau persefahaman atau transaksi di antara pihak Yayasan Melaka dan Anakguam kami yang mempunyai kesan ke atas kepentingan hartanah-hartanah tersebut berhubung pembayaran ini. Sehubungan itu, pembayaran yang dibuat oleh Yayasan Melaka ini bukanlah satu pembayaran menurut seksyen 98 KTN.

[10] Despite the explanation and the payments made, the respondent reject the payment and returned the cashier's order. The rejection was made on the following grounds:

(a) payment was made after the expiry of the three months notice;

(b) Yayasan Melaka was not entitled to make the payment; and

(c) the payment was not made at the Hulu Selangor Land Office in Kuala Kubu Bharu.

[11] The matter does not end there. In respect of group A lands, pursuant to

s 130 of the NLC, the respondent issued notices of forfeiture under Form 8A. No notices of forfeiture have been issued for group B lands. The appellant is dissatisfied with the respondent's action in refusing to accept payment and proceeded to issue notices of forfeiture.

[12] The crux of the appellant's complain are these:

(a) the respondent failed to endorse on the register title of the lands for group A and B lands as required under s 97(2) of the NLC. The endorsement was made only on 2 February 2010, after the expiry of Form 6A notices. Hence, the appellant argue Form 6A notice had no effect in law until and unless the endorsement was made or alternatively the notice took effect after the endorsement was made on 2 February 2010. In this case, payment was made on 1 February 2010, before the endorsement and before the three months period starts to run. Therefore, the respondent is wrong to reject the payment; and

(b) s 99 of the NLC did not give any vested right to the respondent to take into account the entity or its capacity in making the payment as long as full payment is made. Again the appellant say the respondent's refusal to accept the payment is wrong.

SUIT 100 (GROUP C LANDS)

[13] Under this heading, the appellant failed to pay quit rent for the said lands since 2004 for PT 11037 and 2005 for PT 15235. Acting under s 97 of the NLC, the respondent issued Form 6A dated 26 October 2009 and had the same served on the appellant on 29 October 2009. Taking from the date of service of the notice on 29 October 2009, the date of payment will expire on 29 January 2010. The appellant paid the quit rent on 29 January 2010 through Yayasan Melaka. Endorsement on the land title was made on 2 February 2010. Again, the respondent rejected the payment because Yayasan Melaka was not entitled in law to make the payment. Dissatisfied with the respondent's refusal to accept the payment, the appellant filed this appeal.

SUIT 101 (GROUP D LANDS)

[14] Under this heading, the appellant failed to pay quit rent for the said lands since 2009 amounting to RM1,280,321. But, no notices in Form 6A was issued by the respondent. Hence, there is no issue of endorsement on the land title. The appellant proposed to pay the full sum in respect of group D lands by 31 August 2009. However, the appellant only manage to pay RM1m by

31 August 2009. The balance sum of RM280,321 was paid on 14 September 2009. As the appellant failed to pay all its arrears by 31 August 2009, the respondent returned the whole payments of RM1,280,321. The appellant is dissatisfied with the respondent's refusal to accept the payments.

THE ISSUES

[15] The primary issues before this court are:

(a) whether the respondent was right in returning and rejecting the payments made by the appellant in respect of group D lands?

(b) whether the respondent was right in returning and rejecting the payments made by Yayasan Melaka? and

(c) whether the forfeiture of the lands were lawful?

THE LAW

[16] The procedure to be followed by the respondent in collecting arrears of quit rent is provided under ss 97–100 of the National Land Code (NLC). For ease of reference, I reproduce them below:

Section 97 Notice of demand

(1) Where any rent payable in respect of any alienated land is in arrear, The Land Administrator may cause to be served on the proprietor thereof a notice of demand in Form 6A.

(2) A note of the service of any such notice shall be endorsed, by or at the Instance of the Land Administrator, on the register document of title to the land to which the notice relates.

Section 98 Rights of charges, lessees, etc, to pay sum demanded

(1) The sum demanded by any notice under section 97 may be paid to the Land Administrator within the time specified in the notice by any of the following persons or bodies in addition to the proprietor, that is to say-

(a) any person or body having a registered interest affecting the land (including a charge of any lease or sub-lease thereof);

(b) any person or body having a lien over the land, or over any lease or Sub-lease thereof;

(c) any person or body in occupation of any part thereof under any tenancy exempt from registration which has become protected by an endorsement on the register document of title to the land under Section 317; and

(d) any person or body having a claim protected by caveat affecting the land or any interest therein;

And accordingly, as soon as may be after the notice is served on the proprietor, the Land Administrator shall cause to be served on every such person or body a copy thereof, to which there shall be appended the additional notice set out in the Supplement to Form 6A.

(2) Any sum paid by a charge pursuant to subsection (1) shall be added to, and deemed for all purposes of this Act to form part of, the first payment falling due to him under the charge.

(3) Any sum so paid by any other person or body —

(a) shall be recoverable from the proprietor by civil action;

(b) may, if paid by a lessee, sub-lessee or tenant, be recovered alternatively by deduction from any rent then or thereafter payable to him under the lease, sub-lease or tenancy.

(4) Any lessee, sub-lessee or tenant who incurs any additional liability, or suffers any deduction, under this section may recover the amount thereof either by civil action against the proprietor or by deduction from any rent then or thereafter payable by him under his lease, sub-lease or tenancy.

Section 99 Effect of payment of sum demanded

If the whole of the sum demanded by any notice under section 97 is tendered to the Land Administrator within the time specified therein, the notice shall thereupon cease to have effect, and the Land Administrator shall cancel, or cause to be cancelled, the note endorsed pursuant to subsection (2) of that section on the register document of title to the land to which the notice related.

Section 100 Forfeiture for non-payment of sum demanded

The Land administrator shall not during the period specified in any notice under section 97 accept the tender by or on behalf of any person or body of a lesser amount than the sum thereby demanded; and if by the end of that period the whole of that sum has not been tendered to him, he shall thereupon by order declare the land forfeit to the State Authority, And the provisions of Part Eight shall have effect with respect thereto accordingly.

ENDORSEMENT OF SERVICE OF NOTICE

[17] The appellant complains that the respondent failed to endorse the register document of title to the land at the same time he issued the notices of demand in Form 6A pursuant to s 97(2) of the NLC. The appellant therefore argues that time for the notices of demand only started to run when the endorsement was made. In the case of group A and group B lands, time starts running from 2 February 2010. The respondent admitted that the requirement for the endorsement is mandatory and has been done. The dispute is when the endorsement should be done? The respondent argued s 97(2) did not specify

the time limit or period when this endorsement is to be done. Neither was the terms 'concurrently', 'at the same time' or 'immediately' used to signify endorsement must be done at the time of service. Hence, the respondent took the position that as long as the endorsement is done on the register document of title, s 97(2) is complied with. The respondent further argue that s 97(2) does not deal with when time to pay on the demand starts to run. With regard to when time starts to run, the respondent's stand is it is stated in Form 6A itself which is from the date of service of the notice'.

[18] The appellant's argument is the endorsement must be made before the expiry of the notice, otherwise the respondent is not in a position to comply with the provisions of s 99 of the NLC.

[19] Having heard the parties' argument, I am incline to agree with the appellant's contention. First of all, it cannot be denied that the purpose of the issuance of Form 6A is to give notice to the land owner to make payment within the three months period. By virtue of s 97(2), it is mandatory for the respondent to endorse on the register of title to the land of the service of Form 6A on the registered proprietor of the land. The purpose of this endorsement, to quote Abdoolcader J in *Pow Hing & Anor v Registrar of Titles, Malacca* [1981] 1 MLJ 155 at p 158 is 'to give notice to all and sundry with existing or prospective interests in the land in question that a forfeiture may be imminent in the event of non compliance by the registered proprietor with the notice of demand'. Hence, the endorsement acts as a notice of what action need to be done to avoid the happening of certain event. With that purpose in mind, certainly one would not give an expired notice. Now, I don't think the three months notice period to make the payment differs if payment were to be made by any other persons apart from the registered proprietor. I agree that s 97(2) did not specify the time when endorsement is to be made. But if the endorsement is made after the expiry of the three months period from the date of service of Form 6A to the registered proprietor, then it would mean the world at large is not given a chance to make the payment. The subject matter no longer exist. The offer is lapsed. By then, the land is liable to be forfeited already. This is what happen in this case. For group A lands, Form 6A is dated 26 October 2009; served on 29 October 2009; notice expired on 29 January 2010; payment made on 1 February 2010 and endorsement was made on 2 February 2010. In this case, for group A lands, the endorsement had not achieved the very purpose of the endorsement itself as envisage under the NLC. There is another hurdle for the respondent to pass. In the event there is full payment made, how did the respondent reconcile between the fulfillment of s 97(1) and cancellation of the endorsement under s 99 of the NLC when there is no endorsement up to the time when payment was made? By their conduct, the respondent has denied the appellant the right to have the endorsement cancelled upon full payment being made. Instead, the situation is in the

reverse. Payment comes first, endorsement later and cancellation of endorsement had not arisen. The respondent waited for the appellant to make the payment first and make the endorsement one day later. To avoid any confusion, prudent and best practice demand the respondent to endorse the note of the service of Form 6A on the register title of the land on the same day Form 6A was served on the registered proprietor of the land. In this case, for group A lands, it would mean endorsement to be done on 29 October 2009. The next question I had to ask is as long as there is endorsement, does it mean the respondent has complied with s 97(2) of the NLC? It goes back to the basic question of the purpose of making the endorsement. In this case, it is my view that the endorsement had no effect in law as it was made after the expiry of the three months notice. The effect would be the same as if there is no endorsement at all. By implication, it means the respondent has not strictly complied with s 97(2) of the NLC. Even if I am wrong on this point, I further agree with the appellant, that if the respondent insist the endorsement is validly entered, the three months period should start to run from 2 February 2010 so that it would give the requisite notice to the whole world at large. In this case, for group A and group B lands, full payment was made on 1 February 2010, before the endorsement was entered. Hence, the payment was made within time. Assuming again I am wrong on this second point and that time starts to run from the date of service of Form 6A which is 29 October 2009, the last date for payment is 29 January 2010. The payment was made on 1 February 2010, a delay of two days. The court has always apply the principle of reasonableness and inordinate delay. I find the respondent's conduct in waiting and letting the appellant make the payment and then make the endorsement one day later is unreasonable. The two days delay is not an inordinate delay. There is no prejudice caused to the respondent. The respondent has waited for 13 years to collect payment. But when payment was finally made albeit a delay of two days, the respondent refused to accept them. Isn't that weird?

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PAYMENT BY YAYASAN MELAKA

[20] The respondent rejected payments made by Yayasan Melaka on the basis under s 98 of the NLC, Yayasan Melaka is not a person or body entitled to make the payment. I disagree with the respondent's contention. Section 98 of the NLC never expressly prohibited any person not having any interest in the lands from making payment. The provisions of s 98(3)(a) allow the person or body who make the payment to recover the same from the proprietor by civil action. When read as a whole, I was of the view that in general s 98 allow payment to be made by persons other than the registered proprietor. Liberal and wider interpretation should be given to s 98 because the main concern of the respondent is to collect payment and not to enquire the capacity of the entity who made the payment. This conclusion is consistent with the provisions of ss 99–100 of the NLC which says; full payment made, there will

be no forfeiture. If the respondent's argument is to be accepted by this court, it would mean in the future a husband cannot pay quit rent on behalf of his wife, a son cannot pay quit rent on behalf of his mother and so on so forth. Are the law meant to be harsh and led to unreasonable result? Why reject the payment when the appellant and Yayasan Melaka are comfortable with their own arrangement. Probably it is a case of Yayasan Melaka lent the money to the appellant. It is none of this court or the respondent's business to enquire. After all, there is nothing wrong in law for someone to give a helping hand to someone else who is in a dire need to comply with a statutory notice to avoid its lands from being forfeited? On the aforesaid grounds, I hold Yayasan Melaka is entitled in law and in fact to make the payment on behalf of the appellant.

REFUSAL TO ACCEPT PAYMENT FOR GROUP D LANDS

[21] Under this heading, the basis upon which the respondent returned the whole payment of RM1,280,321 to the appellant is solely on the ground the appellant failed to pay the total amount by the end of August 2009. What happen was the appellant promised to pay RM1,280,321 by 31 August 2009. But the appellant only manage to come up with RM1m in August. The respondent accepted the RM1m. The balance sum of RM280,321 was paid by the appellant on 14 September 2009, a delay of 14 days. This resulted in the respondent to return the whole sum to the appellant on 3 February 2010. For this group D lands, Form 6A was not issued, there is no issue of endorsement or payment by Yayasan Melaka or payment out of time. It is simply a case of late payment by 14 days. Under the circumstances, I hold the respondent had no basis to return and reject the payment made by the appellant. The respondent had been unreasonable in rejecting the payment.

CONCLUSION

[22] This is a sad case of the respondent had been making obstacle every step of the way to prevent the appellant from settling the arrears of quit rent. In doing so, the respondent has not only failed to comply with the provisions of section of ss 97(2) and 98–100 of the NLC, but also had acted unreasonably. The refusal to accept payment, the return of payments and the forfeiture are therefore done unlawfully and ought to be set aside. Under those circumstances, justice of the case leans in favour of allowing the appellant's appeal in all the three cases.

DECISION

[23] Notice of Motion No 21–99 of 2010.

Order in term of encl 1 for prayer 1–2.

[24] Notice of Motion No 21–100 of 2010.
Order in term of encl 1 for prayer 1.

[25] Notice of Motion No 21–101 of 2010.
Order in term of encl 1 for prayer 1.

Appeals allowed and respondent's decision set aside.

Reported by Ashok Kumar

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